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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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11 JESUS FUENTES, individually, and on  
12 behalf of other members of the  
general public similarly situated,

13 Plaintiff,

14 v.

15 BELLINGHAM MARINE  
16 INDUSTRIES, INC., and  
DOES 1-100, inclusive,

17 Defendants.  
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Case No. 8:24-cv-00035-JWH-ADS

**ORDER REGARDING  
DEFENDANT'S MOTION TO  
DISMISS [ECF No. 13];  
PLAINTIFF'S MOTION TO  
REMAND [ECF No. 19]; AND  
ORDER TO SHOW CAUSE  
REGARDING SUBJECT MATTER  
JURISDICTION [ECF No. 30]**

Before the Court are the following three matters:

- the motion to dismiss filed by Defendant Bellingham Marine Industries, Inc.;<sup>1</sup>
- the motion to remand filed by Plaintiff Jesus Fuentes;<sup>2</sup> and
- the Court's Order to Show Cause regarding subject matter jurisdiction.<sup>3</sup>

All matters are fully briefed.<sup>4</sup> The Court concludes that these matters are appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. For the reasons detailed herein, the Court **DENIES without prejudice** Bellingham Marine's Motion to Dismiss; **DENIES** Fuentes's Motion to Remand; and **DISCHARGES** the OSC.

## I. BACKGROUND

Fuentes filed this case in Orange County Superior Court in November 2023.<sup>5</sup> Fuentes, on his own behalf and on behalf of all others similarly situated, alleges various claims for relief for wage and hour violations under California state law.<sup>6</sup>

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<sup>1</sup> Def.'s Mot. to Dismiss (the "Motion to Dismiss") [ECF No. 13].

<sup>2</sup> Pl.'s Mot. to Remand (the "Motion to Remand") [ECF No. 19].

<sup>3</sup> Order to Show Cause Regarding Subject Matter Jurisdiction (the "OSC") [ECF No. 30].

<sup>4</sup> *See* Pl.'s Opp'n to Motion to Dismiss (the "Motion to Dismiss Opposition") [ECF No. 20]; Def.'s Opp'n to Motion to Remand (the "Motion to Remand Opposition") [ECF No. 23]; Def.'s Reply in Supp. of Motion to Dismiss [ECF No. 28]; Pl.'s Reply in Supp. of Motion to Remand [ECF No. 29]; Pl.'s Suppl. to Motion to Remand ("Fuentes's OSC Response") [ECF No. 31]; and Def.'s Suppl. to Motion to Remand ("Bellingham Marine's OSC Response") [ECF No. 32].

<sup>5</sup> *See* Notice of Removal [ECF No. 1] ¶ 2.

<sup>6</sup> *Id.*

1 Bellingham Marine removed the action to this Court in January 2024,  
 2 asserting diversity jurisdiction pursuant to the Class Action Fairness Act of 2005  
 3 (“CAFA”) and 28 U.S.C. §§ 1332 & 1441(b).<sup>7</sup> Bellingham Marine filed its  
 4 Motion to Dismiss that same month,<sup>8</sup> and Fuentes filed his Motion to Remand  
 5 in February 2024.<sup>9</sup>

## 6 II. LEGAL STANDARD

### 7 A. Motion to Remand

8 Federal courts are courts of limited jurisdiction. Accordingly, “[t]hey  
 9 possess only that power authorized by Constitution and statute.” *Kokkonen v.*  
 10 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In every federal case, the  
 11 basis for federal jurisdiction must appear affirmatively from the record. *See*  
 12 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). “The right of  
 13 removal is entirely a creature of statute and a suit commenced in a state court  
 14 must remain there until cause is shown for its transfer under some act of  
 15 Congress.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (internal  
 16 quotation marks omitted). Where Congress has acted to create a right of  
 17 removal, those statutes, unless otherwise stated, are strictly construed against  
 18 removal jurisdiction. *See id.*

19 To remove an action to federal court under 28 U.S.C. § 1441, the  
 20 removing defendant “must demonstrate that original subject-matter jurisdiction  
 21 lies in the federal courts.” *Syngenta*, 537 U.S. at 33. A defendant may remove  
 22 civil actions in which either (1) a federal question exists; or (2) complete  
 23 diversity of citizenship between the parties exists and the amount in controversy  
 24 exceeds \$75,000. *See* 28 U.S.C. §§ 1331 & 1332. “Complete diversity” means  
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26 <sup>7</sup> *See generally id.*

27 <sup>8</sup> *See generally* Motion to Dismiss.

28 <sup>9</sup> *See generally* Motion to Remand.

1 that “each defendant must be a citizen of a different state from each plaintiff.”  
 2 *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1234 (9th Cir. 2008).  
 3 With respect to class actions, district courts “have original jurisdiction of any  
 4 civil action in which the matter in controversy exceeds the sum or value of  
 5 \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any  
 6 member of a class of plaintiffs is a citizen of a State different from any  
 7 defendant.” 28 U.S.C. § 1332(d)(2).

8 The right to remove is not absolute, even when original jurisdiction exists.  
 9 In other words, the removing defendant bears the burden of establishing that  
 10 removal is proper. *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th  
 11 Cir. 2006) (noting the “longstanding, near-canonical rule that the burden on  
 12 removal rests with the removing defendant”); *Gaus v. Miles, Inc.*, 980 F.2d 564,  
 13 566 (9th Cir. 1992) (“[t]he strong presumption against removal jurisdiction  
 14 means that the defendant always has the burden of establishing that removal is  
 15 proper” (quotation marks omitted)). Any doubts regarding the existence of  
 16 subject matter jurisdiction must be resolved in favor of remand. *See id.*  
 17 (“[f]ederal jurisdiction must be rejected if there is any doubt as to the right of  
 18 removal in the first instance”).

## 19 **B. Motion to Dismiss**

20 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil  
 21 Procedure tests the legal sufficiency of the claims asserted in a complaint. *See*  
 22 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In ruling on a Rule 12(b)(6)  
 23 motion, “[a]ll allegations of material fact are taken as true and construed in the  
 24 light most favorable to the nonmoving party.” *Am. Family Ass’n v. City &*  
 25 *County of San Francisco*, 277 F.3d 1114, 1120 (9th Cir. 2002). Although a  
 26 complaint attacked by a Rule 12(b)(6) motion “does not need detailed factual  
 27 allegations,” a plaintiff must provide “more than labels and conclusions.” *Bell*  
 28 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

1 To state a plausible claim for relief, the complaint “must contain  
 2 sufficient allegations of underlying facts” to support its legal conclusions. *Starr*  
 3 *v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). “Factual allegations must be  
 4 enough to raise a right to relief above the speculative level on the assumption  
 5 that all the allegations in the complaint are true (even if doubtful in fact) . . . .”  
 6 *Twombly*, 550 U.S. at 555 (citations and footnote omitted). Accordingly, to  
 7 survive a motion to dismiss, a complaint “must contain sufficient factual matter,  
 8 accepted as true, to state a claim to relief that is plausible on its face,” which  
 9 means that a plaintiff must plead sufficient factual content to “allow[] the Court  
 10 to draw the reasonable inference that the defendant is liable for the misconduct  
 11 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks  
 12 omitted). A complaint must contain “well-pleaded facts” from which the Court  
 13 can “infer more than the mere possibility of misconduct.” *Id.* at 679.

#### 14 **C. Leave to Amend**

15 A district court “should freely give leave when justice so requires.”  
 16 Fed. R. Civ. P. 15(a). The purpose underlying the liberal amendment policy is to  
 17 “facilitate decision on the merits, rather than on the pleadings or  
 18 technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Therefore,  
 19 leave to amend should be granted unless the Court determines “that the  
 20 pleading could not possibly be cured by the allegation of other facts.” *Id.*  
 21 (quoting *Doe v. United States*, 8 F.3d 494, 497 (9th Cir. 1995)).

### 22 **III. ANALYSIS**

#### 23 **A. Motion to Remand and OSC**

24 In his Motion to Remand, Fuentes asserts that the Court does not have  
 25 subject matter jurisdiction because Bellingham Marine has not sufficiently  
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1 proven the amount in controversy.<sup>10</sup> Bellingham Marine rejects that assertion.<sup>11</sup>  
 2 The Court issued an OSC with respect to the amount in controversy, instructing  
 3 the parties to conduct jurisdictional discovery and to file supplemental briefs  
 4 accordingly.<sup>12</sup> In its response to the OSC, Bellingham Marine provides  
 5 calculations that it asserts proves that the amount-in-controversy requirement  
 6 was satisfied at the time of removal.<sup>13</sup> Specifically, Bellingham Marine argues  
 7 that the amount in controversy at the time of removal was more than \$12 million  
 8 for the class and more than \$75,000 for Fuentes's individual claims.<sup>14</sup> Fuentes  
 9 continues to dispute that Bellingham Marine has satisfied its burden upon  
 10 removal, but he does not offer any of his own calculations disputing those of  
 11 Bellingham Marine.<sup>15</sup>

12 In reviewing Bellingham Marine's calculations, the Court concludes that  
 13 it has met its burden upon removal. Therefore, the Court **DENIES** Fuentes's  
 14 Motion to Remand. Since the amount in controversy requirement is satisfied,  
 15 the Court also **DISCHARGES** the OSC.

## 16 **B. Motion to Dismiss**

17 Bellingham Marine moves to dismiss this case pursuant to Rule 12(b)(6),  
 18 arguing that Fuentes fails to state a claim.<sup>16</sup> In his Opposition, Fuentes requests  
 19 leave to amend his pleading to address any deficiencies.<sup>17</sup>  
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21 <sup>10</sup> See generally Motion to Remand.

22 <sup>11</sup> See generally Motion to Remand Opposition.

23 <sup>12</sup> See generally OSC.

24 <sup>13</sup> Bellingham Marine's OSC Response.

25 <sup>14</sup> See generally *id.*

26 <sup>15</sup> Fuentes's OSC Response.

27 <sup>16</sup> See generally Motion to Dismiss.

28 <sup>17</sup> See Motion to Dismiss Opposition 14:3-17.

1 In view of the Court's limited judicial resources, it is loath to adjudicate  
 2 serial motions under Rule 12(b) with respect to Fuentes's claims. Instead, the  
 3 Court will direct the parties to engage in another, more rigorous, L.R. 7-3  
 4 Conference of Counsel and will grant Fuentes leave to file an amended pleading.  
 5 *See Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)  
 6 (instructing lower courts that "Rule 15 advises the court that 'leave shall be  
 7 freely given when justice so requires'" and that "[t]his policy is 'to be applied  
 8 with extreme liberality'") (citation and quotation omitted).

9 Therefore, the Court **DENIES without prejudice** Bellingham Marine's  
 10 Motion to Dismiss. The Court suggests that Fuentes take this second  
 11 opportunity to consider carefully Bellingham Marine's criticism of his pleading  
 12 and to present his best-pleaded claims, as the Court will be hesitant to grant  
 13 further leave to amend.

#### 14 IV. DISPOSITION

15 For the foregoing reasons, the Court hereby **ORDERS** as follows:

- 16 1. Fuentes's Motion to Remand is **DENIED**.
- 17 2. The OSC is **DISCHARGED**.
- 18 3. Bellingham Marine's Motion to Dismiss is **DENIED without**  
 19 **prejudice**.

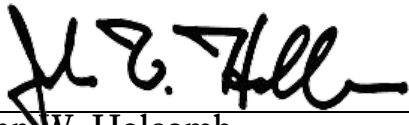
20 4. The parties are **DIRECTED** forthwith to engage in another  
 21 L.R. 7-3 Conference of Counsel regarding the alleged infirmities in the  
 22 Complaint.

23 5. Fuentes is **DIRECTED** to file an amended pleading, if at all, no  
 24 later than June 28, 2024. If Fuentes chooses to file an amended pleading, he is  
 25 also **DIRECTED** to file contemporaneously therewith a Notice of Revisions to  
 26 Complaint that provides the Court with a redline version that shows the  
 27 amendments.  
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1           6.     Bellingham Marine is **DIRECTED** to file its response to Fuentes's  
2     operative pleading no later than July 19, 2024.

3           **IT IS SO ORDERED.**

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5     Dated: June 10, 2024

  
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John W. Holcomb  
UNITED STATES DISTRICT JUDGE